

1

2

3

4

5

6 IN THE UNITED STATES DISTRICT COURT FOR THE  
7 EASTERN DISTRICT OF CALIFORNIA

8

9 WILSON THOMAS,	)	No. CR-F-98-5022 OWW
	)	(No. CV-F-07-009 OWW)
10	)	
11 Petitioner,	)	ORDER DISMISSING MOTION FOR
	)	WRIT OF HABEAS CORPUS
12 vs.	)	PURSUANT TO 28 U.S.C. § 2255
	)	FOR LACK OF JURISDICTION
13	)	
14 UNITED STATES OF AMERICA,	)	
	)	
15 Respondent.	)	
	)	
16	)	

---

17 Wilson Thomas, a federal prisoner presently incarcerated at  
18 F.C.I. in Sheridan, Oregon and who is proceeding *in pro per*, has  
19 filed a motion for writ of habeas corpus pursuant to 28 U.S.C. §  
20 2255. By this motion, Petitioner requests that "this court  
21 correct his sentence under the current set of facts this  
22 petitioner has no other option but to have the trial court Judge  
23 enforce a California State Court Judge's order to have both  
24 sentences as imposed run concurrent and were not, because of an  
25 ongoing government impediment" and seeks a "new Judgment and  
Commitment that would allow for the time that the U.S.M.S. has

1 inadvertently errored [sic] by failing to properly obey this  
2 District Judge's order to have and maintain a federal detainer on  
3 him at all times even though the BOP loaned him out at the State  
4 Court Judge's order" and "for this court to give COMITY to the  
5 State's order to run the State sentence concurrent ...."

6 On March 28, 2006, Petitioner filed a petition for writ of  
7 habeas corpus pursuant to 28 U.S.C. § 2241 in the United States  
8 District Court for the District of Oregon, No. CV-06-421-PA.<sup>1</sup> In  
9 opposing that motion, the BOP submitted the Declaration of BOP  
10 employee Theresa T. Talplacido. Petitioner submits a copy of Ms.  
11 Taplacido's declaration in support of the instant Section 2255  
12 motion, wherein Ms. Talplacido avers in pertinent part:

13       2. On March 24, 1995, Petitioner was  
14 sentenced to three (3) years probation and  
15 365 days in jail for Sale and Transportation  
16 of a Controlled Substance, in the San  
17 Bernardino, Superior Court, Case Number FBA-  
18 00052 ....

19       3. On February 3, 1998, Petitioner was  
20 arrested by the Fresno Police Department on a  
21 probation violation from the County of San  
22 Bernardino, California, Case Number FBA-00052  
23 ....

24       4. On February 6, 1998, Petitioner was found  
25 in violation of probation and he was  
26 transferred to the custody of West Valley  
Central Jail, in San Bernardino, California  
....

5. On April 24, 1998, the U.S.M.S. from the  
Eastern District of California issued a Writ  
Ad Prosequendum for Petitioner to appear in  
federal court for among other things,

---

1According to the PACER docket, Petitioner's Section 2241 motion remains under submission in the District of Oregon.

Conspiracy to Distribute and to Possess Cocaine with Intent to Distribute Cocaine and Cocaine Base, in violation of 21 U.S.C. § 846 and 841(a)(1), and Carrying a Firearm in Relation to a Drug-Trafficking Crime, in violation of 18 U.S.C. § 924(c) ....

6. On February 1, 1999, Petitioner was sentenced by the Honorable Judge Wanger, in the Eastern District of California for Conspiracy to Distribute and to Possess Cocaine with Intent to Distribute Cocaine and Cocaine Base, in violation of 21 U.S.C. § 846 and 841(a)(1), for a 120 month sentence with a 60 month supervision, and Carrying a Firearm in Relation to a Drug-Trafficking Crime, in violation of 18 U.S.C. § 924(c) for a 60 month sentence with a 60 month supervision as consecutive to each federal sentence ....

7. Petitioner remained in the custody of Fresno County Jail from April 28, 1998 to February 17, 1999 ....

8. Petitioner was transferred to another state facility, Kern County Jail from February 17, 1999, to February 26, 1999 and then to San Bernardino County Jail ....

9. On April 2, 1999, Petitioner was sentenced by the State of California for violation of probation on Case Number FBA-00052, to three (3) years to run concurrent with federal sentence ....

10. On May 19, 1999, Petitioner was transferred to California Department of Corrections (CDC), to Chino Prison, in Chino, California. He was paroled and released to the street on January 26, 2001, even though he had a federal detainer. The U.S.M.S. was notified and Petitioner was ordered detained for service of his federal sentence ....

11. On April 2, 2001, Petitioner was re-arrested by the U.S.M.S. and his federal sentence commenced. His sentence computation was verified by BOP on many occasions. His federal sentence was calculated and aggregated to a 180 months sentence with 60

1 month supervision. He was given a projected  
2 release date of on or about May 8, 2014 via  
Good Conduct Time Release.

3 12. On September 14, 2004, he arrived at FCI  
4 Sheridan.

5 In the instant motion, Petitioner asserts that "[a]fter  
6 starting his federal sentence, the State then came and retrieved  
7 Mr. Thomas from Lompoc F.C.I. and took him to custody to  
8 adjudicate a warrant ... whereupon the State Court Judge ordered  
9 his 3 year state sentence to be run concurrent with his federal  
10 sentence, and the Marshalls [sic] were at the completion of the  
11 state sentence hearing to come and pick Mr. Thomas up and return  
12 him to Lompoc F.C.I., that did not occur." Petitioner further  
13 asserts that "the Marshalls [sic] not only failed to retrieve him  
14 they did not properly place a federal detainer on [him], and the  
15 State of California, placed him in Chino Prison." After  
16 Petitioner was paroled by the State and released, "the U.S.M.S.  
17 was notified and they rearrested [Petitioner] on April 2, 2001,  
18 and he was returned to BOP custody without giving comity under  
19 the United States Constitution to the State Court Judges order of  
20 the time that by an error of the U.S.M.S. who was commanded by  
21 the federal court Judge, Judge Wanger, to serve his federal  
22 sentence." Petitioner contends:

23 This petitioner would not have been able to  
24 do anything but to request the U.S.M.S. to do  
it's duty and retrieve this petitioner by  
monitoring the proceedings and picking this  
petitioner up upon completion of his state  
hearing. see Title 28 U.S.C. § 566(a). The  
primary role and mission of the United States  
Marshals Service to provide for the security

1 and to obey, execute, and enforce all orders  
2 of the United States District Courts and  
3 Judge Wanger ordered Mr. Thomas to remain  
4 detained, by lodging a detainer and keeping  
5 track thereof of his body, and to maintain  
6 control of Mr. Thomas even to the extent that  
7 he was required to be retrieved and was not,  
8 after the State Court had ordered his  
9 sentence to run concurrent. Which now has  
created an impediment to which he is paying  
for by the tune of approximately 1095 days of  
uncredited jail time, that BOP has no  
authority, nor does the Warden of this  
facility to adjust the Judgment and  
Commitment or to correct the unlawful acts  
which has caused his sentence to be  
unconstitutionally lengthened.

10 The threshold issue is whether this court has jurisdiction  
11 under Section 2255 to issue the petition for writ of habeas  
12 corpus requested by Petitioner. See *Hernandez v. Campbell*, 204  
13 F.3d 861, 864-865 (9<sup>th</sup> Cir.2000).

14 Generally, motions to contest the legality of a sentence  
15 must be filed under Section 2255 in the sentencing court, while  
16 petitions that challenge the manner, location, or conditions of a  
17 sentence's execution must be brought pursuant to Section 2241 in  
18 the custodial court. *Doganiere v. United States*, 914 F.2d 165,  
19 169-170 (9<sup>th</sup> Cir.1990); *United States v. Giddings*, 740 F.2d 770,  
20 771-772 (9<sup>th</sup> Cir.1984); *Brown v. United States*, 610 F.2d 672, 677  
21 (9<sup>th</sup> Cir.1980).

22 Here, Petitioner challenges the failure of the BOP to credit  
23 his federal sentence with the time served on his state sentence  
24 in state prison because of the alleged failure by the U.S.  
25 Marshals Service to return him to federal prison after the state  
26 court imposed sentence to run concurrent with the federal

1 sentence.

2 28 U.S.C. § 2255 provides in pertinent part:

3 A prisoner in custody under sentence of a  
4 court established by Act of Congress claiming  
5 the right to be released upon the ground that  
6 the sentence was imposed in violation of the  
7 Constitution or laws of the United States, or  
8 that the court was without jurisdiction to  
9 impose such sentence, or that the sentence  
10 was in excess of the maximum authorized by  
11 law, or is otherwise subject to collateral  
12 attack, may move the court which imposed the  
13 sentence to vacate, set aside or correct the  
14 sentence.

15 In contending that this motion is properly brought pursuant  
16 to Section 2255, Petitioner cites to Article IV, Section 1 of the  
17 United States Constitution:

18 Full Faith and Credit shall be given in each  
19 State to the public Acts, Records, and  
20 Judicial Proceedings of every other State.  
21 And the Congress may by general Laws  
22 prescribe the Manner in which such Acts,  
23 Records and Proceedings shall be proved, and  
the Effect thereof.

24 Petitioner also refers to Section 2255 as follows:  
25

26 A 1-year period of limitation shall apply to  
27 a motion under this section. The limitation  
28 period shall run from the latest of -  
29  
30 ...

31 (2) the date on which the  
32 impediment to making a motion created by  
33 governmental action in violation of the  
34 Constitution or laws of the United States is  
35 removed, if the movant was prevented from  
36 making a motion by such governmental action  
37 .....

38 Neither of these provisions confer jurisdiction on this  
39 court to consider Petitioner's Section 2255 motion. The court  
40

1 concludes that this court does not have jurisdiction to hear  
2 Petitioner's motion. As noted, Petitioner seeks a "new Judgment  
3 and Commitment that would allow for the time that the U.S.M.S.  
4 has inadvertently errored [sic] by failing to properly obey this  
5 District Judge's order to have and maintain a federal detainer on  
6 him at all times even though the BOP loaned him out at the State  
7 Court Judge's order" and "for this court to give COMITY to the  
8 State's order to run the State sentence concurrent ...."  
9 Petitioner makes no claim that the federal sentence imposed on  
10 him was illegal or that this court lacked jurisdiction to impose  
11 the sentence. Petitioner makes no showing that this court  
12 intended that his federal sentence run concurrent with any state  
13 sentence that might be imposed by the state court. Petitioner's  
14 claim relates solely to the execution of the federal sentence  
15 imposed. Petitioner must seek this relief pursuant to 28 U.S.C.  
16 § 2241 in the district court for the district in which Petitioner  
17 is incarcerated, i.e., the United States District Court for the  
18 District of Oregon.

19 ACCORDINGLY, as set forth herein,

20 Petitioner's motion for writ of habeas corpus pursuant to 28  
21 U.S.C. § 2255 is DISMISSED for lack of jurisdiction.

22 IT IS SO ORDERED.

23 Dated: February 8, 2007  
24 668554

25 /s/ Oliver W. Wanger  
26 UNITED STATES DISTRICT JUDGE